IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No 259 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SHRI DHULABHAI VASHRAMBHAI PANCHAL

Versus

O.L.OF NUTAN MILLS LIMITED.

Appearance:

1. COMPANY APPLICATION No. 259 of 2002
MR GM JOSHI for Petitioner No. 1
OFFICIAL LIQUIDATOR for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 09/09/2002

ORAL JUDGEMENT

1. The Applicant was workman of Nutan Mills Limited. The Company Petition No.64 of 1993 was filed against the Nutan Mills Limited for liquidation and somewhere in 1997 or so it has already gone in liquidation. The payment is also made to all the workmen and nothing remains with the Official Liquidator.

2. This this Application which is sworn on 27.6.2002 and filed only on 5th September, 2002, in aforesaid Company Petition No.64 of 1993 has been moved today for orders. The applicant workman has taken out this Judges Summons and prayed in prayer 3(A) that this Hon'ble Court be pleased to pass appropriate writ, direction or order directing the respondent No.2 Official Liquidator to pay an amount of Rs.1,07,261/- in respect of the dues, due and payable by the Opponent Company (in liquidation).

3. At the out-set it may be stated that learned Counsel Shri G.M.Joshi appearing for the applicant workman tendered his sincere apology for writing "writ" in prayer : 3(A) and requested the Court to delete the same from the prayer clause as, according to him, by sheer habit it was written in the prayer clause. When the Application is filed on oath then without proper written application such a prayer cannot be granted. Therefore, learned Counsel Shri joshi requested to grant some time to file proper application for deleting that word which is not necessary in view of the fact that I am of the clear opinion that no prayer made in this matter can be granted for the following.

4. The Applicant - workman was dismissed from the service by the respondent - company on 9.8.1984 for which termination Application No. 602 of 1984 was filed by the workman before the Labour Court, Ahmedabad. The Judge, Labour Court No.2, Ahmedabad, by his Judgment and Award dated 18.9.1990 declared the termination of the petitioner workman as illegal and ordered the respondent company to reinstate him in service with 50 % backwages on his original post with all benefits of service and also ordered to pay cost of Rs.100/-.

5. The aforesaid Judgment and Award was challenged by the respondent - company the Nutan Mills Ltd. before the Division Bench of this Court Court by way of Special Civil Application No.6648 of 1991. The said petition was partly allowed with the modification that the workman be paid 40 % instead of 50 % Awarded by the Labour Court as per his consent.

6. In pursuance of the aforesaid orders passed by the Labour Court and this Court it is stated in this Application that the applicant - workman was reinstated in the service with effect from 3.5.1991. However, it seems that he was not given 40 % backwages from the date of his termination i.e. 10.8.1984 to the date of reinstatement i.e. on 3.5.1991 which comes to Rs.80,538/as per the calculation at Annexure : C.

7. As stated earlier the applicant - workman had filed this application before this Court on 5.9.2002 and moved for orders today i.e. after 12 years of order of reinstatement passed by the Labour Court and 11 years after the said order was slightly modified by this Court.

8. Admittedly the respondent company has gone into liquidation since long in Company Petition No.64 of 1993 filed by another party. As stated earlier the entire amount is paid by the Official Liquidator and nothing remains due.

9. Under the circumstances when the applicant workman woke up from the slumber after a period of more than 11 to 12 years then I am of the considered opinion that on the facts and circumstances of the case this application cannot be entertained.

10. Accordingly, this Application to take out the Judges Summons with the aforesaid prayer to direct the Official Liquidator to pay the amount of Rs.1,07,261/cannot be granted.

In view of the above discussion this Application is summarily rejected.

sd/-

Date : September 09, 2002 (B.J.Shethna, J.)

sas